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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of SURENDRA
NAIR and SRIRANGA
KRISHNASWAMY.

SURENDRA NAIR,
Respondent,

v.

SRIRANGA KRISHNASWAMY,
Appellant.

A159069

(San Mateo County Super. Ct.
No. 16FAM00767A)

Appellant Sriranga Krishnaswamy, in propria persona, appeals from a restraining order issued against her under the California Domestic Violence Prevention Act (DVPA) at the request of respondent Surendra Nair. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Krishnaswamy and Nair were married in 1993 and separated in 2016. On September 13, 2019, the trial court issued a temporary restraining order prohibiting Krishnaswamy from contacting or harassing Nair.¹ On

¹ Because Krishnaswamy did not designate Nair's request for a restraining order as part of the appellate record, we glean the circumstances surrounding his request from Krishnaswamy's responsive papers and the

October 1, 2019, Krishnaswamy filed a responsive declaration and exhibits totaling 90 pages in which she detailed why the trial court should deny Nair's request for a restraining order. She explained she "wrote and wrote a lot" of emails and left multiple voice mail messages for Nair because she was concerned about his health. She and Nair had "constant daily communication" throughout their marriage so his "silence" also seemed "abnormal to [her] in [her] 34+ years of association with him." She wanted to know why he was ignoring her and wanted "to offer [her] solace, support and love" "to prevent him from isolation and despair as he was prone to after his debilitating illness and job loss." Her "only motive was love, although unrequited," and she did not "have a switch to turn off [her] love." Her heart was broken as she had been waiting "3 years, 20 days and 2 hours" to see him at a settlement conference in their marital dissolution action.

Nair wrote to Krishnaswamy's attorney in June 2019 for help in getting Krishnaswamy to stop "harassing" him. Krishnaswamy did not think this email was a "warning" not to contact him. Instead, it "escalated [her] concern" because "it sounded like [he] was getting desperate about something." She therefore wrote multiple follow up emails asking Nair "what the exact nature of [her] so called 'Harassment' was" and why it was wrong for her to tell him she loved him and wanted to fight for their marriage. She believed Nair should have "sent an explanation" if he wished to "put an end to it" "[i]nstead [of] . . . collecting and printing my emails for this deplorable action." She felt that if she was causing him a " 'lot of stress and anxiety' " and he was "afraid for his 'physical and mental wellbeing,' " he should have

reporter's transcript of an October 2, 2019 hearing on the restraining order request.

changed his email address “like he has done before in his life” or should have changed his phone number “which he does at the drop of a hat.”

Finally, she declared that if Nair was “hurting” as a result of her actions, she would “stop communicating and wish him well and pray for him from afar.” She asked the trial court to deny his request for a restraining order because she “will not contact him via email or phone” “[g]iven this turn of events” and a restraining order would “taint [her] otherwise impeccable record of being an Honorable American citizen.”

At a hearing on the restraining order, Nair testified that Krishnaswamy began “constantly” calling and emailing him in May 2019, shortly after he moved back to the Bay Area for a new job. He had an “office call log” that showed the number of times Krishnaswamy had called, and he was concerned for his job because his employer noticed he was receiving a lot of personal calls. Krishnaswamy would say in her emails and messages that she still loved him and wanted to be together; for example, in one email she repeatedly wrote in capital letters, “COME BACK TO ME.” Nair testified that he felt a lot of pressure, was uncomfortable, and wanted some peace. When the trial court asked him why he did not tell her that he no longer loved her and wished to move on, Nair said he had tried to do so in the past but it resulted in increased communication because she would “pick on each [email], each sentence, and come back voluminous. I couldn’t handle that.”

Nair’s attorney stated the harassment was longstanding and that Nair could have filed this request “years ago but didn’t want to . . . cause any further complications or delays in his divorce. But he’s at his wits’ end, and he just wanted to be able to concentrate on his work, so he can keep his job.” Counsel said she warned Krishnaswamy in 2017 that Nair “would not be communicating with her anymore and that the communication should be

going through the attorneys.” Nevertheless, Krishnaswamy continued to contact Nair directly and “[i]t came to a head this year when he returned to the Bay Area.” Counsel said that Krishnaswamy refuses to speak to her even though she is Nair’s attorney of record, “[s]o I don’t know what else to do.”

Krishnaswamy reiterated much of what she stated in her responsive papers. She acknowledged she sent “voluminous” emails but testified she did so out of love. She said she has “enough strength” in her to not contact him anymore and to wish him well from afar.

The trial court noted that while the emails and voicemails were not “threatening,” “the volume of contact” was a cause for concern. There were at least 20 emails in one week, including five long emails in one day that had nothing to do with the divorce proceedings. “[Y]ou are constantly contacting him, questioning him, wanting a response, asking questions repeatedly.” “So at some point constant contact does become harassing and disturbing the peace. . . [I]t’s constant. It’s repetitive, and the dissolution was filed three years ago. . . Just this last month . . . you are still constantly emailing him.” “I understand you . . . prefer not to contact his attorney, but . . . this repetitive nature of constantly contacting someone does become harassing. He hasn’t responded. He hasn’t encouraged. I see nothing from him that would lead you to believe that he wants this contact.” The court also noted Krishnaswamy continued to contact Nair after he and his attorney asked her to stop. The court added that it might “view it differently if this was one year since the filing of the dissolution, and you had questions. This is now three years. And had this been one [email] a week, and it was questioning certain things [relating to the divorce proceedings], I would also find it differently.” “The number of [emails] are so voluminous that I do find them to be

disturbing the peace and harassing based upon the constant [emailing] with constant questions and reminder and memories. . . .”

At the end of the hearing, the trial court issued a six-month restraining order with an expiration date of April 15, 2020. The court ordered Krishnaswamy to stay 100 yards away from Nair’s home, job, and vehicle, surrender any firearms, and not “harass, attack, strike, threaten, assault[,] . . . hit, follow, stalk, molest, destroy personal property, [or] disturb [Nair’s] movement.” Nair’s attorney asked for the order to be in place until “after the parties’ trial date next August” but the court denied the request, stating Nair could request a renewal of the order or file a new request. Krishnaswamy timely appealed and filed an opening brief on February 27, 2020. Nair did not file a respondent’s brief.

DISCUSSION

We first address whether the appeal should be dismissed as moot. “‘It is well settled that an appellate court will decide only actual controversies and that a live appeal may be rendered moot by events occurring after the notice of appeal was filed. We will not render opinions on moot questions.’” (*Building a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 866.) Thus, as a general rule, an appeal will be dismissed as moot when any ruling by this court “can have no practical effect [nor can it] provide the parties with effective relief.” (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454; cf. *Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 495–496 [appeal from expired civil harassment restraining order was not moot where the order had been renewed].)

Here, the trial court issued a six-month restraining order with an expiration date of April 15, 2020. However, the order was still in effect when

Krishnaswamy filed her opening brief, and we do not know whether Nair has requested and obtained renewal of the order. We also do not know whether Nair has filed, or plans to file, a new request in which he relies on the fact that a restraining order was previously issued. Given the uncertainty of the status of the restraining order, and the potential continuing effect of the order on any further proceedings between the parties, we exercise our discretion to resolve this matter on the merits. (*Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144 [appellate court has discretion to resolve a moot appeal on the merits].)

Under the DVPA (Fam. Code, § 6200 *et seq.*), a trial court may issue a protective order “to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved” upon “reasonable proof of a past act or acts of abuse.” (*In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 225, 228.) “The DVPA defines domestic violence, as relevant here, as abuse perpetrated against a spouse or child of a party. ([Fam. Code,] § 6211, subds. (a) & (e).)” (*In re Marriage of Davila & Mejia, supra*, 29 Cal.App.5th at p. 226, fn. omitted.) Abuse is defined broadly and includes contacting the other party “either directly or indirectly, by mail or otherwise” or “disturbing the peace of the other party,” which “may be properly understood as conduct that destroys [the other party’s] mental or emotional calm.” (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1496–1497; Fam. Code, §§ 6203, 6320.) The court may issue a restraining order under the DVPA “simply on the basis of an affidavit showing past abuse.” (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334, 337–338.) The DVPA “confer[s] a discretion designed to be exercised liberally, at least more liberally than a trial court’s discretion

to restrain civil harassment generally.” (*Id.* at p. 334.) The burden of proof is by a preponderance of the evidence. (*Cooper v. Bettinger* (2015) 242 Cal.App.4th 77, 90, fn. 14.)

We review the grant of a DVPA restraining order for abuse of discretion, and, to the extent we are called upon to review the court’s factual findings, we apply the substantial evidence standard of review. (*In re Marriage of Davila & Mejia, supra*, 29 Cal.App.5th at p. 226.) In reviewing the evidence, we examine the entire record to determine whether there is any substantial evidence—contradicted or uncontradicted—to support the trial court’s findings. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.) We must accept as true all evidence supporting the trial court’s findings, resolving every conflict in favor of the judgment. (*Ibid.*) We do not determine credibility or reweigh the evidence. (*Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 107.) If substantial evidence supports the judgment, reversal is not warranted even if facts exist that would support a contrary finding. (*Ibid.*)

Here, there was sufficient evidence to support the trial court’s finding that Krishnaswamy’s conduct constituted harassment and/or disturbing the peace. There was evidence she constantly attempted to contact Nair over the course of many months, including sending emails and calling him numerous times. She continued to engage in these acts even after he and his attorney asked her to stop. Three years had passed since Nair filed for divorce and there was nothing in the record indicating he had done anything to invite or encourage Krishnaswamy’s behavior. Krishnaswamy asserts she never meant to harass Nair and that she does not think she caused him “any distress.” Nair, however, testified that he felt a lot of pressure, was worried he would lose his job, “couldn’t handle” the contact, and wanted some peace.

He asked Krishnaswamy's attorney for help in stopping the harassment, but Krishnaswamy did not stop; instead, she sent him more emails asking why he was accusing her of harassment and why it was wrong for her to fight for their marriage. Krishnaswamy asserts she made no threats, but "abuse" under the DVPA does not require threatening behavior.

In light of Krishnaswamy's constant contact and her inability or refusal to stop the contact, coupled with the distress caused to Nair, the trial court did not abuse its discretion in granting Nair's request for a restraining order.

DISPOSITION

The restraining order is affirmed. No costs on appeal shall be awarded.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Fujisaki, J.

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